

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

UNITED STATES OF AMERICA,	:	CASE NO. 1:18-CR-687
	:	
Plaintiff,	:	
	:	CHIEF JUDGE PATRICIA A. GAUGHAN
vs.	:	
	:	
SILVIO LEON,	:	<u>NOTICE OF AUTHORITY</u>
	:	
Defendant.	:	

Defendant Silvio Leon, through undersigned counsel, now provides this Court with an update on the pending sentencing issues. Mr. Leon was originally scheduled to be sentenced on August 20, 2019. On that date, the parties jointly requested that sentencing be continued, and this Court moved the sentencing hearing to November 6, 2019 at 10:00 a.m. The reason for this continuance because one of the key issues in determining Mr. Leon’s sentencing guideline range is the applicability of the recent Sixth Circuit case *United States v. Havis*, 927 F.3d 382 (6th Cir. June 6, 2019). The presentence report calculates the loss amount in this case as being \$2,570,669.00, which results in an enhancement of 16 levels under U.S.S.G. § 2B1.1(b)(1)(I). PSR at ¶ 44. This formula relies entirely on the “Special Rules” as set forth in U.S.S.G. § 2B1.1, Commentary 3(F), which indicate that in determining loss for cases involving counterfeit or unauthorized access devices, there should be a loss of \$500 per access device. Mr. Leon contends that *Havis* renders this application note, and this calculation, to be improper, as the commentary expands the definition of the guideline text. The parties have raised this issue in their respective sentencing memoranda. Dkt. 36; Dkt. 42.

Because the government was potentially seeking to challenge *Havis* before the United States Supreme Court, the parties felt continuing the instant case was proper until the Supreme Court had decided on whether to address *Havis*. The defense has recently come to learn that the Solicitor General's office has decided not to seek a writ of certiorari in *Havis*. As a result, the Sixth Circuit's opinion in *Havis* will remain good law. Defense counsel felt this Court should be aware of this development, and that the parties will be ready to proceed with sentencing on November 6th.

Respectfully submitted,

STEPHEN C. NEWMAN
Federal Public Defender
Ohio Bar: 0051928

/s/ Jeffrey B. Lazarus
JEFFREY B. LAZARUS
Assistant Federal Public Defender
1660 W. 2nd Street, Suite 750
Cleveland, Ohio 44113
Telephone: (216) 522-4856
Facsimile: (216) 522-4321
jeffrey_lazarus@fd.org

Attorney for Silvio Leon